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Trustee of the LPG Liquidation Trust

11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

14 In re:

15 THE LITIGATION PRACTICE GROUP P.C.,

16 Debtor,

Chapter 11

Case No.: 8:23-bk-10571-SC

**MOTION FOR AN ORDER EXTENDING
THE ESTATE’S TIME TO FILE
ACTIONS GOVERNED BY 11 U.S.C. §§
108, 546(a), AND 549(d); MEMORANDUM
OF POINTS AND AUTHORITIES; AND
DECLARATION OF RICHARD A.
MARSHACK IN SUPPORT**

[NO HEARING REQUIRED PURSUANT
TO RULE 9013-1(O) OF THE LOCAL
BANKRUPTCY RULES]

1	<u>TABLE OF CONTENTS</u>	
2	SUMMARY OF ARGUMENT	1
3	JURISDICTION AND VENUE	2
4	BACKGROUND	2
5	A. Debtor’s Scheme	2
6	B. Trustee’s Efforts Since His Appointment	5
7	C. Recent Developments	6
8	LEGAL ARGUMENT	6
9	A. Section 546’s Limitation Period May Be Extended	6
10	i. A Court May Enlarge A Statute of Limitations Period By Order.....	6
11	ii. A Court May Enlarge The Statute of Limitations By Equitable Tolling.....	8
12	iii. Good Cause Exists For The Court To Enlarge The Period To Bring Additional	
13	Adversary Proceedings Under FRBP 9006(b) and Equitable Tolling Due To	
14	Trustee’s Demonstrated Diligence Is Also Justified.....	9
15	B. Section 549’s Limitation Period May Be Extended	12
16	CONCLUSION.....	13
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

American Pipe & Const. Co. v. Utah 414 U.S. 538 (1974).....	12
Congrejo Invs., LLC v. Mann (In re Bender) No. AZ-07-1178-NKD, 2007 Bankr. LEXIS 4911 (B.A.P. 9th Cir. Nov. 21, 2007).....	12
Ernst & Young v. Matsumoto (In re United Ins. Mgmt.) 14 F.3d 1380 (9th Cir. 1994)	7, 8
Gladstone v. U.S. Bancorp 811 F.3d 1133 (9th Cir. 2016)	8
Glus v. Brooklyn E. Dist. Termina 359 U.S. 231 (1959).....	12
Holmberg v. Armbrrecht 327 U.S. 392 (1946).....	12
In re Cramer 636 B.R. 830 (Bankr. C.D. Cal. 2022).....	7
In re Fundamental Long Term Care, Inc. 501 B.R. 784 (Bankr. M.D. Fla. 2013)	8, 9
In re Int'l Admin. Servs. 408 F.3d 689 (11th Cir. 2005)	7, 8
In re Kwok 2024 Bankr. LEXIS 369 (Bankr. D. Conn. Feb. 15, 2024)	8, 9
Moratzka v. Pomaville (In re Pomaville) 190 B.R. 632 (Bankr. D. Minn 1995)	8
Official Creditors' Comm. for Omect, Inc. v. Electrochem Funds, LLC (In re Omect, Inc.) 349 B.R. 620 (Bankr. N.D. Cal. 2006)	9
Olsen v. Zerbetz (In re Olsen) 36 F.3d 71 (9th Cir. 1994)	12
Pace v. DiGuglielmo 544 U.S. 408 (2005).....	8
Templeton v. Milby (In re Milby) 545 B.R. 613 (B.A.P. 9th Cir. 2016)	8

Statutes

11 U.S.C. § 108.....	1
11 U.S.C. § 541.....	1

1	11 U.S.C. § 542.....	1
2	11 U.S.C. § 544.....	1, 6, 9
3	11 U.S.C. § 545.....	6, 9
4	11 U.S.C. § 546.....	1, 7, 9
5	11 U.S.C. § 546(a)	9
6	11 U.S.C. § 546(a)(1).....	6, 9
7	11 U.S.C. § 546(a)(2).....	6
8	11 U.S.C. § 547.....	1, 6, 9
9	11 U.S.C. § 548.....	1, 6, 9
10	11 U.S.C. § 549.....	1, 12
11	11 U.S.C. § 549(d)	12
12	11 U.S.C. § 550.....	1
13	11 U.S.C. § 551.....	1
14	11 U.S.C. § 553.....	6, 9
15	28 U.S.C. § 1334.....	2
16	28 U.S.C. § 1408.....	2
17	28 U.S.C. § 1409.....	2
18	28 U.S.C. § 157(a)	2
19	28 U.S.C. § 157(b)	2
20	<u>Rules</u>	
21	Fed. R. Bankr. Pro. 9006(b).....	7, 9
22	Fed. R. Bankr. Pro. 9011(b).....	10
23	Fed. R. Civ. Pro. 11(b).....	10

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1 TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY COURT
2 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
3 PARTIES:

4 Richard Marshack, solely in his capacity as the former Chapter 11 Trustee (“Trustee”) for the
5 Bankruptcy Estate (“Estate”) of The Litigation Practice Group P.C. (“Debtor” or “LPG”) and current
6 Liquidating Trustee of the LPG Liquidation Trust, respectfully submits this motion for entry of an
7 order extending the time to file actions governed by 11 U.S.C. §§ 108, 541, 542, 544, 546, 547, 548,
8 549, 550 and 551 (“Recovery Claims”) for a period of approximately 180 days to September 15,
9 2025. In support thereof, Trustee states as follows:

10 **SUMMARY OF ARGUMENT**

11 Limitation dates to file claims held by bankruptcy estates can be extended upon a showing of
12 good cause. In this case, the deadline to file adversary complaints under the Recovery Claims expires
13 on March 19, 2025 (the “Litigation Deadline”).

14 Trustee submits that good cause exists to extend or equitably toll the Litigation Deadline. As
15 detailed below, Trustee has not been idle in this case. He has diligently investigated and untangled
16 the complex affairs of Debtor, its principals, associates, and affiliated businesses. As a result, Trustee
17 has initiated and prosecuted dozens of adversary proceedings and has already recovered millions of
18 dollars for the benefit of Debtor’s numerous creditors, many of whom are the previous consumer
19 clients of Debtor.

20 Despite significant challenges, including: concealment, and in some cases, destruction of
21 relevant evidence; reticent percipient witnesses; and other litigation-related obstacles, Trustee’s
22 ongoing investigation has been prolific. Using previously unavailable sources and methods, Trustee
23 recently identified new potential defendants and additional causes of action to be included in existing
24 cases. Trustee is now drafting and vetting dozens of new adversary proceedings against recently
25 identified defendants. In sum, Trustee’s investigation has revealed additional defendants who should
26 not be allowed to enjoy their ill-gotten gains at the expense of Debtor’s creditors.

27 Thus, Trustee submits that good cause exists to grant this motion.

28 ///

1 **JURISDICTION AND VENUE**

2 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a). This
3 matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C.
4 §§ 1408 and 1409.

5 **BACKGROUND**

6 On March 20, 2023 (“Petition Date”), Debtor filed a voluntary petition for relief under Chapter
7 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of
8 California, initiating Case No. 8:23-bk-10571-SC.

9 On May 8, 2023, Trustee was appointed as Chapter 11 Trustee of the Estate and assumed all
10 authority to administer the Estate in this case. Docket No. 65.

11 On September 9, 2024, the Court entered an order (“Confirmation Order”) confirming the
12 Modified First Amended Joint Chapter 11 Plan of Liquidation (Dated June 14, 2024) (“Plan”) [Dk.
13 No. 1646]. On September 24, 2024, the Trustee filed the Notice of Occurrence of the Effective Date
14 of the Plan [Dk. No. 1762] (“Effective Date”). Thereafter, Trustee became the trustee of the
15 liquidating trust.

16 **A. Debtor’s Scheme**

17 Debtor operated as a law firm that provided consumer debt resolution services to its clients.
18 The disbarment of Tony M. Diab (“Mr. Diab”) in California and Nevada resulted in the Debtor’s
19 formation. Mr. Diab was disbarred in Nevada for significant misconduct, including stealing a
20 \$375,000 client settlement payment, forging client retainer agreements to conceal the conversion of
21 client funds, and forging the signature of a judge on a falsified order.

22 On February 7, 2019, the State Bar of California entered default against Mr. Diab on similar
23 claims in a pending California proceeding and placed Mr. Diab’s law license on involuntary inactive
24 status. Mr. Diab was subsequently disbarred from the practice of law in California on January 10,
25 2020.

26 Debtor was incorporated in California on February 22, 2019. The incorporation occurred less
27 than a month after Mr. Diab’s Nevada disbarment and two weeks after Mr. Diab’s law license was
28 placed on involuntary inactive status in California. The Trustee alleges that the Debtor was formed to

1 conceal the transfer and continuation of Mr. Diab's preexisting debt resolution practice
2 notwithstanding his inability to practice law and for Mr. Diab to essentially continue the practice post-
3 disbarment.

4 The Trustee's diligent prosecution of this case has exposed Mr. Diab's scheme and has already
5 resulted in millions of dollars collected for the benefit of Debtor's defrauded creditors.

6 Prepetition, Debtor serviced more than 50,000 consumer clients across the United States with
7 an estimated annual cash flow of \$150 million in 2022. That cash flow, however, does not represent
8 a revenue stream in which Debtor has an equitable interest, to the contrary, the monies received were
9 essentially trust funds belonging to consumer clients of LPG, misused by the Debtor.

10 Debtor utilized both in-house and third-party marketing affiliates to obtain consumer client
11 referrals on a massive scale. Mr. Diab used processing entities he controlled, including Vulcan
12 Consulting Group LLC, Coast Processing LLC, PrimeLogix LLC, and/or Maverick Management
13 Group LLC to divert LPG consumer funds and ACH receivables. Mr. Diab would use numerous ACH
14 processing companies to easily transfer millions of dollars from Debtor to these entities without
15 oversight or detection, and to avoid payment disputes and complications. The money that flowed from
16 Debtor through these bank account, and then to various defendants, consisted of client funds that were
17 funneled to these entities by means of the ACH processing companies.

18 Debtor also utilized a network of hundreds of third-party marketing affiliates to purchase
19 referrals. In each case, Debtor acquired potential client data either in-house or from third-parties that
20 identified victims of predatory lending, consumer debt potentially subject to challenge, and through
21 other methods. Rather than pay for these referral lists upfront, Debtor paid third-party marketing
22 affiliates a percentage of its "revenue" stream, the collections earned from referred clients through
23 revenue generated from those clients during their engagement with the Debtor. The marketing
24 affiliates' practices were dubious at best and, included direct solicitation and referral of clients (which
25 violated the rules of professional conduct governing licensed attorneys in multiple jurisdictions). In
26 some circumstances, the marketing affiliates would assist with the execution of a Legal Service
27 Agreement ("LSA") between the Debtor and a consumer client. Trustee asserts that this arrangement

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1 was illegal, was detrimental to Debtor, and served primarily to line the pockets of the affiliate
2 marketing companies.

3 The series of prepetition transactions involving Debtor, Mr. Diab, Mr. Diab's co-conspirators,
4 or their affiliates include the following:

- 5 • Repeatedly either selling, or utilizing as purported collateral, the same accounts
6 receivable from the same client files to factoring companies, other lenders, or
7 investors;
- 8 • Transferring client files to third parties selected by Mr. Diab or his co-conspirators
9 for little or no consideration and without consumer client consent;
- 10 • Diverting ACH draws from consumer clients under the LSAs to the accounts of
11 processing entities; and
- 12 • Causing the processing entities to initiate duplicative and unauthorized ACH draws
13 against consumer client accounts.

14 The foregoing transactions, among others, siphoned substantial cash flow from Debtor and its
15 legitimate creditors. Debtor also entered into a series of purportedly secured borrowings, sales, and
16 investments on unfavorable terms to finance its operations and to pay fees owed to the marketing
17 affiliates that Debtor could not otherwise sustain.

18 In addition to the marketing affiliates, Debtor also conducted business with so-called
19 Merchant Cash Advance ("MCA") lenders with whom it had MCA Agreements. LPG received
20 payments from consumers over time, and it often sought financing by borrowing against these
21 receivables primarily through the MCA Agreements. However, LPG was not selling accounts
22 receivable to MCA lenders, it was instead obtaining short term loans in return for the transfer of future
23 monthly payments made by clients. This borrowing was not only used to finance operations at LPG
24 and to pay fees owed to the marketing companies for providing the client referrals, but also was used
25 to pay creditors that had provided earlier-in-time financing in a growing Ponzi scheme.

26 Given that all or a substantial portion of Debtor's ACH Receivables were transferred multiple
27 times, there were more claims for payment from any one ACH Receivable than the receivable would
28 generate. Creditors and clients became increasingly aware of the misconduct orchestrated by Mr. Diab

1 and his co-conspirators. For example, between late April 2023 and May 2023, entities to which Debtor
2 impermissibly transferred client files began receiving client complaints related to duplicative or
3 fraudulent ACH draws against their accounts. Other creditors who expected more significant
4 payments under the terms of their agreements began filing lawsuits to enforce their asserted rights
5 against Debtor. On March 10, 2023, a California state court in one such lawsuit ordered the
6 appointment of a receiver. Debtor filed the Bankruptcy Case on March 20, 2023, in part, to frustrate
7 the appointment of the Receiver.

8 **B. Trustee's Efforts Since His Appointment**

9 Trustee has retained several professionals, including the national law firm of Dinsmore &
10 Shohl LLP ("Dinsmore"), to do a deep dive into the misconduct described above. This included
11 locating witnesses who worked for LPG, witnesses who worked for competitors of LPG (the
12 fraudulent conveyance partners), creditors of LPG, and advertising affiliates of LPG who provided
13 documents and testimony that exposed the many tentacles of Mr. Diab's fraudulent enterprise.

14 Just weeks after his appointment, Trustee filed an adversary proceeding no. 8:23-ap-01046
15 (the "1046 Action") against dozens of defendants, including Mr. Diab. (Declaration of Richard A.
16 Marshack ("Marshack Dec.") at ¶ 10.) One of the main objectives of this early adversary proceeding
17 was preserve evidence to be used in Trustee's nascent investigation. *Id.* This is emblematic of
18 Trustee's top-down approach to this litigation. (*Id.*) In other words, Trustee believed it prudent, given
19 the scale of the task, to pursue claims against the worst and most culpable of the many bad actors in
20 this case. (*Id.* at ¶ 21.) Trustee believed, and has been proven correct, that this strategy would not only
21 lead to greater recovery of funds for the Estate, but also would reveal significant sources of
22 information that could be put to good use in subsequent litigation. (*Id.*) This is exactly what has
23 occurred. The investigation remains ongoing.

24 Since filing the 1046 Action, Trustee has successfully objected to several proofs of claim,
25 thereby preserving significant funds for distribution to creditors. Trustee has initiated dozens of
26 adversary proceedings against high-value defendants, including marketing affiliates and MCA
27 lenders. If successful, these actions will recover millions of dollars for distribution to creditors.

28 ///

Trustee is investigating and vetting causes of action against dozens more marketing affiliates and MCA lenders, all of which will be filed by March 19, 2025.

Trustee also successfully challenged 23 purported lienholders who asserted liens encumbering nearly \$175 million of Debtor's assets. Trustee's challenges to these lienholders resulted in settlements reducing the secured claims amount from \$169,901,643 to \$1,355,000.

Trustee has settled or is in current settlement negotiations with dozens of defendants to avoid costly litigation. (Marshack Dec. ¶ 20) The proceeds from those settlements not yet fully resolved, when finalized and approved by this Court, will be used for the benefit of the Estate, and creditors of the Liquidating Trust.

A comprehensive summary of the Trustee's investigative efforts and actions taken in this case through November of 2024 is set forth in Dinsmore's Second and Final Chapter 11 Fee Application (Dkt. 1900).

In the midst of this investigation, Trustee managed to confirm Plan.

C. Recent Developments

Over the last three months, Trustee has made significant progress in identifying, locating, and investigating more potential recipients of fraudulent conveyances, participants in Mr. Diab's scheme, and sources of information that can help Trustee discover even more. Trustee is in the lengthy process of sifting through recently produced evidence and vetting proposed causes of action against dozens of new defendants. Trustee anticipates filing over a hundred adversary proceedings in the coming months.

LEGAL ARGUMENT

A. Section 546's Limitation Period May Be Extended

i. A Court May Enlarge A Statute of Limitations Period By Order

"An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after . . . the later of . . . 2 years after the entry of the order for relief; or 1 year after the appointment or election of the first trustee . . ." 11 U.S.C. § 546(a)(1). Alternatively, if the case is closed or dismissed before the time period in § 546(a)(1) expires, no further action may be commenced. 11 U.S.C. § 546(a)(2).

1 Federal Rule of Bankruptcy Procedure (“FRBP”) 9006(b) states in pertinent part:

2 “This paragraph (1) applies when these rules, a notice given under these rules, or a
3 court order requires or allows an act to be performed at or within a specified period... the
4 court may—at any time and for cause—extend the time to act if:

5 (A) with or without a motion or notice, a request to extend is made before the period
6 (or a previously extended period) expires; or

7 (B) on motion made after the specified period expires, the failure to act within that
8 period resulted from excusable neglect.”

9 Most courts agree that the limitations period under § 546 may be enlarged. *See Ernst & Young*
10 *v. Matsumoto (In re United Ins. Mgmt.)*, 14 F.3d 1380, 1384-85 (9th Cir. 1994). In taking up the
11 question of whether the two-year limitations period under § 546 may be enlarged by FRBP 9006(b),
12 the Eleventh Circuit noted that although FRBP 9006(b) “does not explicitly encompass statutory
13 timeframes, it does bring all of the Federal Rules of Bankruptcy Procedure under its umbrella.” *In re*
14 *Int’l Admin. Servs.*, 408 F.3d 689, 699 (11th Cir. 2005)¹. The court further noted that “this would
15 include Rule 7001, which defines an adversary proceeding as one ‘to recover money or property’ and
16 Rule 7003, which governs the commencement of adversary proceedings.” *Id.* Thus, the Eleventh
17 Circuit concluded that § 546 was a statute of limitations subject to enlargement by the court—not a
18 jurisdictional bar or statute of repose (in which case it would not be subject to enlargement). *Id.*
19 Finally, the Court held that bankruptcy courts generally have “discretion to extend the filing period
20 for an adversary proceeding[.]” *Id.* (finding that the Bankruptcy Court had authority to extend the
21 filing period for adversary proceedings within the purview of Fed. R. Bankr. P. 9006(b) where the
22 Trustee had encountered significant difficulty and delay in discovery preventing the timely filings of
23 adversary proceedings). *See also In re Kwok*, 2024 Bankr. LEXIS 369 (Bankr. D. Conn. Feb. 15,

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25

26 ¹ Trustee is aware of at least one non-binding case in this Circuit that does not agree with the analysis
27 of the Eleventh Circuit as to a Bankruptcy Court’s ability to enlarge a statute of limitations period
28 under FRBP 9006(b). *See In re Cramer*, 636 B.R. 830 (Bankr. C.D. Cal. 2022). However, in *Cramer*,
the prevailing concern was lack of notice of the motion to extend deadlines to prospective defendants.
It is for this reason that Trustee has endeavored to serve notice of this motion as widely as reasonably
possible under the circumstances.

2024) (“the Court concludes that it may extend the statutes of limitation set forth by sections 108(a), 546(a), and 549(d) pursuant to Rule 9006(b) despite Rule 9006(b) not including ‘statute’ in its language.”) (citing among other cases, *In re Int’l Admin. Servs.*) (emphasis added).

ii. **A Court May Enlarge The Statute of Limitations By Equitable Tolling**

Despite holding that a court order was sufficient to enlarge the two-year limitations period, the Eleventh Circuit nevertheless decided, in an abundance of caution, to analyze whether the enlargement of time was appropriate under an equitable tolling analysis. *In re Fundamental Long Term Care, Inc.*, 501 B.R. 784, 788 (Bankr. M.D. Fla. 2013) (discussing *In re Int’l Admin. Servs.*, 408 F.3d 689 (11th Cir. 2005)). Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

In the context of equitable tolling, the equities to consider in determining whether to extend or toll a statute of limitations in a bankruptcy proceeding often involve whether the debtor failed to cooperate with the bankruptcy trustee or sought to impede the trustee’s investigation and liquidation of assets for the benefit of creditors. *In re Kwok*, 2024 Bankr. LEXIS 369, at *15 citing *Gladstone v. U.S. Bancorp*, 811 F.3d 1133, 1143 (9th Cir. 2016).

Indeed, “[a] bankruptcy case presents a rather different slant on equitable tolling. In the typical situation, it is the debtor’s conduct rather than the defendant’s conduct which invokes equitable tolling. In some senses, this is unfair to the defendant. On the other hand, unlike the usual civil case where a plaintiff at least has the advantage of being a party to the underlying transaction, a bankruptcy trustee must rely almost entirely on a third party (the debtor) to provide the information necessary to uncover avoidable transfers.” *Moratzka v. Pomaville (In re Pomaville)*, 190 B.R. 632, 637 (Bankr. D. Minn 1995).

“Every court that has considered the issue has held that equitable tolling applies to § 546(a)(1).” *In re United Ins. Mgm.*, 14 F.3d at 1384. Moreover, a “court should not look at the trustee’s post-discovery diligence when considering whether equitable tolling should be applied.” *Templeton v. Milby (In re Milby)*, 545 B.R. 613, 622 (B.A.P. 9th Cir. 2016). The limitations period may also be extended by court order or stipulation. *Official Creditors’ Comm. for Omect, Inc. v.*

1 *Electrochem Funds, LLC (In re Omect, Inc.)*, 349 B.R. 620, 624-25 (Bankr. N.D. Cal. 2006) (§ 546’s
2 legislative history indicates that the time limits of § 546(a) “are not intended to be jurisdictional and
3 can be extended by stipulation between the necessary parties to the action or proceeding”).

4 When an extension of time is sought before the § 546 time period expires, the request is
5 governed by the “for cause” analysis under Rule 9006(b). *See, e.g. In re Fundamental Long Term*
6 *Care, Inc.*, 501 B.R. 788; *In re Int’l Admin. Servs.*, 408 F.3d. at 699.

7 **iii. Good Cause Exists For The Court To Enlarge The Period To Bring**
8 **Additional Adversary Proceedings Under FRBP 9006(b) and Equitable**
9 **Tolling Due To Trustee’s Demonstrated Diligence Is Also Justified**

10 Here, the Petition Date is March 20, 2023, which means that, under 11 U.S.C. § 546(a)(1), the
11 deadline for Trustee to file a complaint under 11 U.S.C. §§ 544, 545, 547, 548, or 553 is March 19,
12 2025. (Marshack Dec. at ¶ 3.) Good cause exists to extend the deadline under the facts of this case.
13 As a practical matter, Trustee has not been given the benefit of the full two years to bring an action
14 because he was appointed nearly two months after the commencement of the Bankruptcy Case. *See*
15 *In re Kwok*, 2024 Bankr. LEXIS 369 at *22-23) (Trustee appointed 5 months after petition date). At
16 a minimum, it would seem this consideration alone warrants an extension to give Trustee the benefit
17 of at least the full two years.

18 In terms of Trustee’s diligence and good cause, the Trustee discovered early on that as the
19 Debtor was approaching the bankruptcy filing, it was not only transferring its assets, but destroying
20 emails, documents, and information related to the scheme. The Trustee has thus had to seek numerous
21 2004 applications to obtain relevant financial records from Debtor, Debtor’s principals and other
22 entities that Diab controlled. Trustee has steadfastly pursued his investigation using all available
23 methods of information gathering including regular use of subpoenas, depositions, witness interviews,
24 demand letters, and other methods of informal discovery. (*Id.* at ¶ 16.) In the course of these efforts,
25 Trustee has encountered obstacles such as intentional concealment and/or destruction of relevant
26 evidence, reticent percipient witnesses, and document production well into the tens of millions of
27 pages in scope. (*Id.* at ¶¶ 13-16.) All of this is against the backdrop of a widespread criminal scheme
28 to defraud consumers using a sophisticated and deliberately opaque network of interrelated entities
and individuals that aided and abetted the main scheme. (*Id.* at ¶ 17.)

1 Trustee has enlisted the assistance of both local and national law firms who have brought their
2 considerable resources to bear on uncovering as many bad actors as can reasonably be found.
3 Through Trustee's constant and diligent endeavors, Trustee has compiled a list numbering in the
4 hundreds of entities and individuals who were involved in some manner in the greater scheme. (*Id.* at
5 ¶ 15.) Trustee has exercised discretion in prioritizing litigation targets after thoughtful deliberation
6 on the available evidence and the amount in controversy.

7 An additional obstacle encountered by Trustee has been the "moving target" nature of the
8 investigation caused by, *inter alia*, new sources of information, and compliance with subpoenas,
9 which necessarily forces Trustee and his professionals to constantly re-assess and re-prioritize. For
10 example, Trustee is discovering new fraudulent transferees and new causes of action based upon
11 sources of information not available until just a few months ago. (*Id.* at ¶ 22.) The information learned
12 through these sources has been put to immediate use in the ongoing investigation. Compliance with
13 Trustee's subpoenas has revealed additional transfers of Debtor's funds, which necessarily alters the
14 calculus on whether and on what grounds to pursue a given litigation target. Trustee anticipates that
15 the information from these sources will result in even stronger causes of action, which, in turn, could
16 facilitate the settlement process, and reduce the amount of necessary litigation.

17 Trustee is mindful of his obligation imposed by Federal Rule of Civil Procedure 11(b) and its
18 analogue, Federal Rule of Bankruptcy Procedure 9011(b), and will make every attempt to investigate
19 each claim, within reason, prior to filing an adversary proceeding.² Given the challenges faced,
20 Trustee has still filed numerous adversary proceedings, many of which are in active litigation. (*Id.* at
21 ¶ 19.) Trustee has also sent out scores of demand and probable cause letters to potential litigation
22 targets based on his ongoing investigation. (*Id.*)

23 The balance of equities weighs strongly toward granting the relief sought by this motion. The
24 creditors of Debtor, many of whom were victims of a sophisticated criminal conspiracy, deserve to
25 have as much money recouped as possible. Again, the uncommon level of sophistication of the

26
27 ² Trustee's investigation of many claims is substantially impeded because well over 100 possible
28 defendants have failed to respond to the Trustee's numerous demand and probable cause letters
(multiple rounds to letters to each transferee) requesting documents and information related to
potentially avoidable transfers.

1 conspiracy has made it an extraordinary task to untangle the complex web created by Debtor and its
2 many cohorts. Thus, the wrongdoers, aiders, and abettors who have managed to evade Trustee's
3 spotlight to date should not get off scot-free where this Court may extend the statute of limitations.
4 Especially where the ring-leader and individual at the center of the conspiracy is a former attorney
5 who is well aware of the statute of limitations the Trustee is facing.

6 The authority of the Court to extend these deadlines is rooted in sound public policy
7 recognizing that pre-litigation investigations are often protracted affairs caused by intentional
8 hindrance and obstruction. Even when making timely and prudent use of the tools available to conduct
9 an investigation, time can still run short, given the extraordinary circumstances this case poses. As
10 noted, Trustee has made use of dozens of subpoenas to banks and credit card companies and, when
11 necessary, has threatened those entities with applications for issuance of orders to show cause re:
12 contempt. (*Id.* at ¶16). Trustee has also conducted many witness interviews, depositions, and other
13 informal discovery to gather the required information. (*Id.* at ¶13). The extraordinary volume of
14 information, which Trustee estimates is approximately 34 million documents and counting, gathered
15 to this point is a testament not only to Trustee's diligence, but also the sheer scale of the task before
16 Trustee and his professionals. (*Id.* at ¶16).

17 Despite thoughtful focused searches and proper prioritizing of litigation targets, Trustee still
18 has the task of reviewing nearly a million documents. (*Id.*) These documents range from emails to
19 bank statements, to various corporate documents, the review of which is tedious and extremely time-
20 consuming. Even at a very conservative estimate of one minute per targeted document for review, it
21 would still take well over a year and a half for a single person, doing nothing else but reviewing these
22 documents 24 hours a day, seven days a week to complete such a review. In other words, just
23 reviewing the most pertinent documents produced in this case consumes a substantial portion of the
24 time allotted by the statute of limitations.

25 Once the pertinent documents in Trustee's possession are catalogued, and it has been
26 determined that there is sufficient information with which to press claims against a given target,
27 Trustee must then take following actions: locate current addresses for businesses and their principals,
28 locate agents, pull corporate records to see if they are still operating; perform asset search to make

1 sure they are collectable, and then attempt to make contact through demand letters and requests for
2 further documentation. (*Id.* at ¶16).

3 Despite the need for an extension, Trustee and his professionals have been diligently pursuing
4 their litigation targets. Trustee anticipates that by the current deadline, Trustee will be prepared to file
5 more than one hundred adversary complaints. (*Id.* at ¶22).

6 In sum, this case, due to the combination of factors discussed above, clearly illustrates good
7 cause for the extension of deadlines and equitable tolling.

8 **B. Section 549’s Limitation Period May Be Extended**

9 Section 549 provides in pertinent part that “[a]n action or proceeding under this section may
10 not be commenced after the earlier of (1) two years after the date of the transfer sought to be avoided
11 or (2) the time the case is closed or dismissed . . . ” 11 U.S.C. § 549(d). Because § 549 is a statute of
12 limitations, it too is subject to enlargement. For example, it may be enlarged by court order and
13 equitable tolling. The two-year limitation period on the bankruptcy trustee’s action to void a post-
14 petition transfer of estate property can be equitably tolled by the Debtor’s conduct. *Olsen v. Zerbetz*
15 (*In re Olsen*), 36 F.3d 71, 73 (9th Cir. 1994); *see also, Congrejo Invs., LLC v. Mann (In re Bender)*,
16 No. AZ-07-1178-NKD, 2007 Bankr. LEXIS 4911 at *14 (B.A.P. 9th Cir. Nov. 21, 2007) (holding
17 the principle of equitable tolling applies to § 549(d), as stated by the Ninth Circuit in *In re Olsen*).

18 The Supreme Court itself has previously held that “in cases where the plaintiff has refrained
19 from commencing suit during the period of limitation because of inducement by the defendant, or
20 because of fraudulent concealment, this Court has not hesitated to find the statutory period tolled or
21 suspended by the conduct of the defendant.” *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 559
22 (1974) (citing *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231 (1959) and *Holmberg v. Armbrrecht*,
23 327 U.S. 392 (1946)).

24 Though already set forth in detail above, Trustee offers the following summation: Trustee
25 entered the case nearly two months after the Petition Date and immediately set to the task of
26 conducting this enormous investigation. Trustee quickly employed professionals to aid in the
27 investigation. Even with the considerable resources brought to bear by Trustee, the sheer scale of the
28 undertaking, including navigating an opaque labyrinth of associated individuals and entities, to say

1 nothing of the millions of documents produced, is one that requires additional time to properly and
2 completely prosecute.

3 For the reasons discussed above, Trustee submits that additional time beyond the March 19,
4 2025, deadline is required to ensure that Trustee is able to conduct a thorough investigation and do
5 right by the creditors and the Court consistent with the mandate attending his appointment.

6 **CONCLUSION**

7 Trustee has been diligently and prudently conducting an unusually complex, multi-faceted
8 investigation to recover the substantial sums lost to the LPG criminal enterprise. Trustee has
9 overcome major obstacles and impediments in order to bring the investigation to its current state. He
10 is in the midst of properly vetting causes of action, with an eye toward incorporating them into both
11 new and existing adversary proceedings. Trustee believes the requested 180-day extension is both
12 warranted and modest given the circumstances of this case, and he requests that the Court approve
13 the extension.

14 Respectfully submitted,

15 Dinsmore & Shohl LLP

16
17 Dated: February 19, 2025

18 By: /s/ Yosina M. Lissebeck
19 Yosina M. Lissebeck
20 Special Counsel to Richard A.
21 Marshack, Former Chapter 11 Trustee
22 for the Bankruptcy Estate of The
23 Litigation Practice Group P.C. and
24 current Liquidating Trustee of the LPG
25 Liquidation Trust
26
27
28

DECLARATION OF RICHARD A. MARSHACK

I, Richard A. Marshack, declare as follows:

1. I am the duly appointed Chapter 11 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of the Litigation Practice Group P.C. (“Debtor”) and liquidating trustee of the LPG Liquidation Trust.

2. I am an individual over 18 years of age and competent to make this declaration. Unless otherwise stated, I have personal knowledge of the matters set forth in this declaration, and if called upon to do so, I could and would be able to testify to these facts.

3. I make this declaration in support of my motion for an order extending the Estate’s time to file actions governed by 11 U.S.C. §§108, 546(a)(1), and 549(d) for a period of 180 days to September 15, 2025 (the “Motion”). The current deadline to file these actions is March 19, 2025.

4. All terms not defined herein are used as they defined in the Motion.

5. On March 20, 2023, Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Petition Date”).

6. I was duly appointed as the chapter 11 trustee on May 8, 2023.

7. The Court confirmed the Modified First Amended Joint Chapter 11 Plan of Liquidation (Dated June 14, 2024) (the “Plan”) on September 9, 2024. A true and correct copy of the Order Confirmation the Plan can be found at Dkt. No. 1646 on the court at <https://www.cacb.uscourts.gov/>.

8. Upon my appointment, I promptly set about initiating an investigation into Debtor’s affairs in an effort to size up the scale of the task of administering the Estate. In doing so, I discovered the pre-petition facts set forth in the Motion, and quickly grasped the enormity of the undertaking.

9. Realizing the magnitude of assistance required to administer this estate, I engaged the services of the national law firm, Dinsmore & Shohl LLP (“Dinsmore”) as my special counsel, Marshack Hays and Wood (“MHW”) as my general counsel, and accountants, Grobstein Teeple LLP (“Grobstein”).

10. In the first few weeks following my appointment, with the assistance of Dinsmore, I initiated an adversary proceeding, bearing case number 8:23-ap-01046-SC, against numerous

1 defendants including Debtor's principal, Tony Diab ("Mr. Diab") to, among other things, enjoin the
2 transfer or dissipation of Estate assets recover assets transferred pursuant to certain avoidable or
3 fraudulent transactions, and obtain turnover of certain Debtor assets not in the possession, custody,
4 or control of the Debtor. This action is emblematic of my top-down approach to litigation in this case.

5 11. I then filed an emergency motion [Adv. Dkt. No. 4], inter alia, seeking turnover of
6 certain estate property, a preliminary injunction, lock-out of certain parties from accessing certain
7 estate property, and related relief. The motion and related papers [Adv. Dkt. Nos. 3-8] included
8 requests for immediate turnover and preservation of critical operating information, client information,
9 accounts, ACH processing accounts, bank accounts and client funds. On June 23, 2023, the
10 Bankruptcy Court entered an order [Adv. Dkt. No. 70] granting the motion.

11 12. By preserving much, though not all, of the information in Debtor's possession,
12 custody, and control, I, with the assistance of Dinsmore, MHW and Grobstein, was able to confirm
13 the identities of key associates, business partners, and affiliates of Debtor who actively participated,
14 aided, and abetted Debtor's scheme.

15 13. Thereafter, with the assistance of my professionals, I conducted witness interviews,
16 depositions of key individuals, and propounded scores of discovery requests upon the individuals and
17 entities associated with Debtor.

18 14. Unfortunately, in the course of this investigation, I learned that at least some Estate
19 assets had been transferred, lost, or destroyed. One method of destroying evidence that I became
20 aware of was through shredding documents, including complaints from state attorneys general. (Adv.
21 Dkt. No. 493-10; Supplemental Declaration of Alex Rubin ¶ 24 and Exhibit 43). Mr. Diab also,
22 through the creation of new entities, transferred substantial portions of Debtor's assets pre-petition in
23 an effort to frustrate anticipated investigations into Debtor.

24 15. With this knowledge, I began the next phase of investigating the hundreds of
25 individuals and entities who received transfers of funds from Debtor as a result of the unlawful
26 fraudulent conspiracy in the four years prior to the Petition Date. Using the information gathered
27 through subpoenas, I have become aware of transfers to many of these individuals and entities. As
28 such, with subpoenas still out, these investigations remain ongoing.

1 16. An effective and thorough investigation necessarily entails reviewing documents that
2 number at least in the tens of millions (by least one estimate known to me, approximately 34 million
3 documents). Understand that through targeted filtering of the documents, the number of documents
4 requiring review is still nearly 1 million. It means issuing scores of subpoenas to third parties, some
5 of whom resists and require me to threaten them with an Order To Show Cause re: Contempt. Based
6 on what those subpoenas reveal, there may be a need for additional subpoenas and requests for
7 documents to even more third parties. Then the sometimes more difficult tasks begin, including
8 locating current addresses for businesses and their principals; locating agents; pulling corporate
9 records to see if businesses are still operating; performing asset searches to make sure they are
10 collectable; and then attempting to make contact through demand letters and requests for further
11 documentation. This is the inescapable nature of investigations of this type.

12 17. An indispensable aspect of Mr. Diab's scheme was to make Debtor's network as
13 confusing and opaque to an outsider as possible such that any investigation by a regulatory agency,
14 law enforcement agency, or, as is the case here, a court appointed trustee, would encounter a
15 seemingly endless parade of obstacles and impediments.

16 18. Being a former attorney, Mr. Diab was all too aware of the statute of limitations period
17 and knew that any investigation would inevitably meet a time crunch to bring mature and properly
18 vetted complaints against him, his co-conspirators, and aiders and abettors.

19 19. To date, despite the considerable impediments I have confronted in the course of his
20 investigation, I have prosecuted dozens of well-vetted adversary proceedings, with dozens more
21 undergoing the vetting process, and which will be filed in the near future. Indeed, the pre-litigation
22 of sending demand and probable cause letters to scores of additional potential defendants is underway.

23 20. I have also settled or am in current settlement negotiations with dozens of defendants
24 in an effort to avoid costly litigation. The proceeds from those settlements not yet fully resolved,
25 when finalized and approved by this Court, will be used for the benefit of the Estate and the creditors
26 of the Liquidating Trust.

27 21. I have always believed that taking a top-down approach to filing adversary proceeding
28 actions in this case was the wisest course of action. In other words, focusing on the worst and most

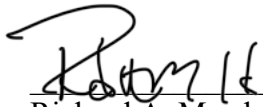
1 culpable parties first would be the most prudent course because litigation against them offered the
2 highest return on investment of time and resources. This return on investment is not just in terms of
3 recovery of funds, but also in information that will aid in secondary litigation.

4 22. I believe my course action has been correct because not only have I been able to
5 recover millions of dollars for the benefit of creditors, I have uncovered sources of information not
6 available until recently that will be of tremendous aid in identifying heretofore unknown bad actors.
7 I anticipate having filed at least one hundred adversary proceedings before the current deadline. If
8 successful, these adversary proceedings will generate millions of dollars for the Estate, which can be
9 distributed to creditors.

10 23. For these reasons, I submit that extending the deadlines to file adversary complaints
11 under 11 U.S.C. §§108, 546, and 549 is not only warranted, but necessary under basic principles of
12 equity and justice.

13 I declare under penalty of perjury under the laws of the United States of America, that the
14 foregoing is true and correct to the best of my knowledge.

15 Executed this 18 day of February 2025.

16
17 
Richard A. Marshack"

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 655 W. Broadway, Suite 800, San Diego, California 92101

A true and correct copy of the foregoing document: **MOTION FOR AN ORDER EXTENDING THE ESTATE'S TIME TO FILE ACTIONS GOVERNED BY 11 U.S.C. §§ 108, 546(a), AND 549(d); MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF RICHARD A. MARSHACK IN SUPPORT**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On February 19, 2025, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On February 19, 2025, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

YCIR Inc.
Hector Ocegueda
535 S Barranca St #4
Covina, CA 91723

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on February 19, 2025, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

JUDGE'S COPY - VIA FEDEX

The Honorable Scott C. Clarkson
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5130 / Courtroom 5C
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 19, 2025
Date

Caron Burke
Printed Name

/s/ Caron Burke
Signature

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